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February 27, 2004

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Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Room 700
Washington, D. C. 20423

RE: Docket No. AB-55 (Sub-No. 568X), *CSX Transportation, Inc.—Abandonment Exemption—in Franklin County, PA*

Dear Secretary Williams:

Enclosed are the original and 10 copies CSX Transportation, Inc.'s Reply and three diskettes containing the file Reply.doc.

Please time and date stamp the additional copy of this letter and the Reply, and return them to our messenger. Thank you for your assistance.

If you have any questions, call or email me.

Sincerely yours,

Louis E. Gitomer
Attorney for CSX Transportation, Inc.

Enclosures

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-55 (Sub-No. 568X)

CSX TRANSPORTATION, INC.-ABANDONMENT EXEMPTION
IN FRANKLIN COUNTY, PA

REPLY OF CSX TRANSPORTATION, INC.



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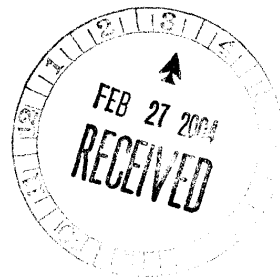
Dated: February 27, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-55 (Sub-No. 568X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—
IN FRANKLIN COUNTY, PA

REPLY OF CSX TRANSPORTATION, INC.



CSX Transportation, Inc. ("CSXT") replies to the comments of the Borough of Chambersburg ("Chambersburg") and Frederick Armstrong Fox, Frederick A. Fox, Kaye A. Fox, and New Franklin Properties, LLC (the "Foxes"). CSXT seeks an expeditious end to this abandonment proceeding, which began on November 16, 1998.

BACKGROUND

CSXT filed a Petition for Exemption on November 16, 1998 to abandon a 1.9-mile line of railroad known as the Baltimore Service Lane, Lurgan Subdivision, extending between milepost BAV-20.5 at 4th Street and milepost BAV-22.4 at Commerce Street in Chambersburg, Franklin County, PA (the "Line"). Subject to employee protective conditions, a public use condition, and an interim trail use/rail banking condition, the abandonment exemption was granted. *CSX Transportation, Inc.—Abandonment Exemption—in Franklin County, PA*, STB Docket No. AB-55 (Sub-No. 568X) (STB served March 9, 1999).

There are three line segments. Segment 1 is between 4th Street, valuation station 1083+20, and Main Street, valuation station 1096+20, but does not include the Main Street crossing. Segment 2 is between Main Street, valuation station 1096+20, including the Main

Street crossing, and South Street, valuation station 1122+30, not including the South Street crossing. Segment 3 is between South Street, valuation station 1122+30, including the South Street crossing, and Commerce Street, valuation station 1182+72, including the Commerce Street crossing.

CSXT agreed to transfer the Line to Chambersburg pursuant to an agreement with the Pennsylvania Department of Transportation (the "PADOT Agreement"), which is set to expire on March 18, 2004.¹ Under the PADOT Agreement, CSXT has abandoned Segment 3, salvaged the track and transferred the property to Chambersburg. Only the disposition of Segments 1 and 2 remain to be resolved.

An offer of financial assistance ("OFA") under 49 U.S.C. § 10904 to acquire Segment 2 was filed on March 12, 1999 by Frederick Armstrong Fox, Frederick A. Fox, Kaye A. Fox, and Karla M. Fox (the "Offerors"). The Board accepted the OFA and postponed the abandonment in a decision served on March 23, 1999. CSXT notes that Offerors assumed the risk that once Segment 1 was abandoned and reclassified as excepted industrial track, that it could have been removed from service at any time, leaving Segment 2 an island with no connection to the national rail system.² CSXT and the Offerors agreed to the sale and purchase of Segment 2 under the OFA process. The Board authorized the transfer of Segment 2 and the dismissal of the abandonment of Segment 2 upon consummation of the sale in a decision served on May 7, 1999.

¹ The parties are negotiating to extend the expiration date of the PADOT Agreement to October 18, 2004.

² See 49 U.S.C. § 10906.

Consummation of the abandonment and the negotiation of an interim trail use/rail banking condition were extended many times.³ During this time, the Offerors withdrew the OFA,⁴ and then had it reinstated.⁵ On August 15, 2003, nearly four and one-half years after the deadline for filing an OFA, Frederick Armstrong Fox, Frederick A. Fox, and Kaye A. Fox (the “Second Offerors”) sought to file an OFA for Segment 1.⁶ The Second Offerors then sought a stay of the abandonment of Segment 1, which the Board granted.⁷ New Franklin Properties, LLC (“NFP”) sought to intervene in support of granting the Second Offerors’ petition or for permission to file its own OFA for Segment 1. While the OFA is pending on Segment 2, there is also an interim trail use/rail banking condition pending for Segment 2.

The Board sought additional information on the plans of the Offerors, the Second Offerors, NFP, Chambersburg, and CSXT.⁸ In that decision, the Board correctly explained the tensions of the OFA process. A party acquiring a line of railroad through the OFA process must provide rail service over that line for at least two years and may not transfer the property within five years of acquisition to anyone but the selling railroad.⁹ A party acquiring a rail line under the OFA process becomes a railroad common carrier, subject to a railroad’s rights and obligations.

³ See decisions served March 22, 2000, January 8, 2001, March 30, 2001, June 19, 2001, September 10, 2001, December 28, 2001, June 24, 2002, September 30, 2002, January 31, 2003, and July 29, 2003.

⁴ See decision served March 30, 2001.

⁵ See decision served September 10, 2001.

⁶ CSXT is referring to this group as the Second Offerors because only three of the original four Offerors make up the group.

⁷ Decision served September 17, 2003.

⁸ Decision served January 20, 2004, as extended by decision served February 6, 2004.

⁹ 49 U.S.C. 10904(f)(4)(A).

Based on CSXT's review of the comments filed with the Board on February 17, 2004, it appears that the Offerors, the Second Offerors, and/or NFP are willing to acquire Segments 1 and 2. Chambersburg would not object to such acquisition as long as the Main Street crossing is included in Segment 1 and the Offerors, the Second Offerors, and/or NFP accepts the responsibility for maintaining the Main Street crossing. The Main Street crossing is within the boundaries of Segment 2. Based on these comments and CSXT's desire to bring this abandonment to conclusion, CSXT requests the following relief.

CSXT'S POSITION

CSXT has sought to terminate its rail service over the Line and dispose of the Line since the Petition for Exemption was filed on November 16, 1998. That is still CSXT's position. CSXT has abandoned and transferred Segment 3 to Chambersburg. However, disposal of Segments 1 and 2 has not yet occurred.

Segment 2. Segment 2 is subject to the Offerors' OFA and an interim trail use/rail banking condition. CSXT recognizes that the OFA preempts the interim trail use/rail banking condition.

CSXT would like to expeditiously consummate the OFA. CSXT and the Offerors have agreed to terms under the OFA, and CSXT is ready, willing and able to sell Segment 2 to the Offerors immediately. Where the parties to an OFA request the Board to set the terms and conditions, the Board normally gives the parties 90 days to consummate the transaction. There has been an agreement between CSXT and the Offeror for Segment 2 for nearly five years, since CSXT notified the Board of the agreement in a letter filed April 9, 1999. Keeping in mind that the Offerors assumed the risk of acquiring an island line disconnected from the national railroad system by filing their OFA only for Segment 2, despite the uncertain future of Segment 1, CSXT

respectfully requests the Board to require the Offerors to: (1) notify CSXT within 10 days of the service of the decision in this proceeding whether they intend to acquire Segment 2 through the OFA process; and (2) if Offerors intend to acquire Segment 2 through the OFA process, then CSXT requests that consummation of the acquisition of Segment 2 occur within no more than 30 days after the Board serves a decision in this proceeding. If the Offerors fail to consummate the purchase of Segment 2 within 30 days of the service of the decision in this matter, and CSXT and Offerors do not agree otherwise, CSXT requests the Board to declare that Offerors have withdrawn the OFA and that CSXT can proceed to either dispose of Segment 2 under the interim trail use/rail banking condition or as abandoned property.¹⁰

Segment 1. CSXT is also anxious to dispose of Segment 1. It appears to CSXT that Chambersburg and the Second Offerors and NFP are interested in acquiring Segment 1 for continued rail service. If Segment 1 is sold to Chambersburg, then CSXT will sell it under the terms of the PADOT Agreement. Otherwise, CSXT wants to sell Segment 1 for the 2001 appraised value of \$164,500, updated through 2004.

CSXT understands that if Segment 1 is acquired before CSXT consummates the abandonment and outside the interim trail use/rail banking process, then the buyer will be acquiring an active line of railroad and will obtain the rights and obligations that go along with acquiring the physical assets. Not only will the acquiring entity be required to provide rail service to anyone along Segment 1 requesting service, but will have to interchange with CSXT at the south end of Segment 1 and with Offerors at the north end of Segment 1, if they acquire Segment 2 through the OFA process.

¹⁰ CSXT would consummate the abandonment of Segment 2 before disposing of it as abandoned property.

CSXT does not believe that it is appropriate to sell Segment 1 through the OFA process. OFAs for the Line were required to be filed by March 12, 1999. On March 12, 1999, Offerors filed an OFA for Segment 2. Offerors could have also filed an OFA for Segment 1 at that time to ensure the connection of Segment 2 to the national railroad system. Instead, Offerors apparently made a conscious decision to accept the risk of acquiring a potential island of railroad that was to be connected to the national railroad system over Segment 1, which was to be reclassified as excepted industrial track after abandonment and sale.

On August 15, 2003, the Second Offerors sought to amend the OFA filed by the Offerors over four years earlier to include Segment 1, or to file a new OFA for Segment 1. NFP filed in support of the Second Offerors, or in the alternative sought to file its own OFA for Segment 1. The Second Offerors and NFP apparently seek an OFA for Segment 1 because of a real estate transaction they consummated on property adjacent to Segment 1 on July 30, 2002.

CSXT contends that any acquisition of Segment 1 should occur outside of the OFA process. First, the time for filing OFAs expired nearly five years ago on March 12, 1999. Second, the Offerors assumed a substantial risk when they filed an OFA only for Segment 2. Third, the reason Second Offerors and NFP are seeking an OFA for Segment 1 is because of their real estate transaction, not because of any action by CSXT. Fourth, Second Offerors and NFP created additional delay by waiting over one year from the time the property adjacent to Segment 1 was acquired to file their request for an OFA for Segment 1. Fifth, under the OFA process and Board precedent it could be five months after the Board's decision before CSXT sold Segment 1 to the Second Offerors or NFP.¹¹ Sixth, it has been over four years since CSXT and the Offerors

¹¹ CSXT arrives at five months if the parties are unable to agree to the terms and conditions for sale and the Board is requested to set the terms and conditions. Under the typical OFA process,

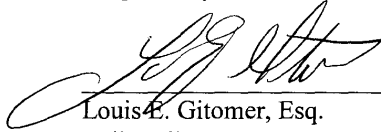
agreed on the terms and conditions for the sale and purchase of Segment 2 (and about three and one-half years since the OFA for Segment 2 was reinstated), and that transaction has yet to close. Finally, CSXT has absorbed the opportunity costs of holding non-productive property valued at over \$250,000 for more than five years. All of these reasons weigh heavily against permitting the filing of an OFA more than five years after it was required to be filed under the statute. In addition, CSXT is willing to sell Segment 1 for appraised value outside the OFA process, consistent with its contractual obligations, and Chambersburg has indicated a willingness to make Segment 1 available for continued rail service.

CONCLUSION

CSXT respectfully requests that the Board expeditiously decide this proceeding. CSXT respectfully requests that the Board require the expeditious consummation or termination of the OFA for Segment 2. CSXT respectfully requests that the Board not permit the filing of an OFA for Segment 1, but permit the sale of Segment 1 to go forward outside of the OFA process.

Respectfully Submitted,

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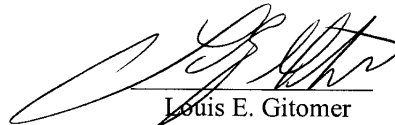
Attorneys for:
CSX TRANSPORTATION, INC.

Dated: February 27, 2004

the parties are given 30 days to negotiate and if they do not agree, present their valuation request to the Board at the end on that time. The Board then has 30 days to set the terms and conditions of sale. See 49 U.S.C. § 10904(d)(2). Once the Board has set the terms and conditions, it normally gives the parties another 90 days to close the transaction.

CERTIFICATE OF SERVICE

I certify that this day, February 27, 2004, I have served copies of this Reply on all parties of record in this proceeding, by first class mail, postage pre-paid.



Louis E. Gitomer
February 27, 2004